

Message Text

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TO SECSTATE WASHDC IMMEDIATE 9674
INFO AMCONSUL MUNICH IMMEDIATE
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C O N F I D E N T I A L SECTION 1 OF 5 LISBON 8929

USIA FOR IEU MCLAUGHLIN

E.O. 11652: XGDS-4
TAGS: PINT, PO,US
SUBJECT: BIB/RFE NEGOTIATIONS: ANALYSIS OF FIGUEIREDO
DRAFT CONTRACT

REF: (A) LISBON 8909; (B) LISBON 8830

SUMMARY: THIS CABLE CONTAINS EMBASSY'S ANALYSIS OF
DRAFT CONTRACT FIGUEIREDO LAID ON THE TABLE DEC. 22.
RARET/EMBASSY REVIEW CONFIRMED INITIAL ASSESSMENT
THAT FIGUEIREDO DRAFT WILL REQUIRE EXTENSIVE ALTERATION
TO MEET BIB/RFE REQUIREMENTS, AS WE UNDERSTAND THEM.
EMBASSY WOULD APPRECIATE BIB'S REACTION. END SUMMARY.

1. WE HAVE CONDUCTED DEC 28 AND 29 A DETAILED REVIEW
OF FIGUEIREDO'S DRAFT CONTRACT WITH RARET MANAGER, HER
SENIOR ASSISTANT AND RARET ATTORNEY. STUDY CONFIRMED
PRINCIPAL PROBLEM AREAS EMBASSY OUTLINED IN REFTEL (B),
PLUS MANY OTHER LESSER CONCERNS. RARET HAS SENT COPIES
OF FIGUEIREDO DRAFT TO RFE MUNICH AND BIB WASHINGTON.
EMBASSY POUCHED COPY TODAY TO DEPT ATTENTION EUR/
ARMITAGE. (REG. NO. 849276 IN POUCH KT-5452, ETA WASHINGTON
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JAN. 2.)

2. ANALYSIS OF FIGUEIREDO CONTRACT FOLLOWS, KEYED TO
NUMERATION OF HIS DRAFT.

-- ARTICLE 1: (A) WORD "ENLARGE" OF THIRD LINE IN
RARET DRAFT IS OMITTED, UNDER FIGUEIREDO COM-

MITTEE GENERAL CONCEPT THAT AUGMENTING RARET FACILITIES SHOULD BE HANDLED UNDER SEPARATE, NEW CONTRACTS. (B) PHRASE "OR OF ANY OTHER ENTERPRISE WHICH MAY SUCCEED IT, OR AN ASSOCIATE" ALSO WAS OMITTED. (COMMENT: (A) MUST BE TAKEN UP IN NEGOTIATIONS; (B) IS LESS CRUCIAL.)

-- ARTICLE 1, PARA. 1: RARET VERSION WAS DROPPED AND REPLACED WITH THIS TEXT: "THE TRANSFER, UNDER ANY CIRCUMSTANCES, OF THE RIGHTS, OR OF THE POSITION GRANTED BY THIS CONTRACT TO RARET, WILL ALWAYS BE SUBJECT TO PRIOR AGREEMENT OF THE PORTUGUESE STATE." (COMMENT: RARET ATTORNEY BELIEVES OMITTED MATERIAL COULD BE CEDED AND THIS OPERATION HANDLED IN A RARET-CTT EXCHANGE OF LETTERS.)

-- ARTICLE 1, PARA 2: NO CHANGE.

-- ARTICLE 2: CREATES SEVERAL ISSUES WHICH WE BELIEVE MUST BE RESOLVED IN NEGOTIATIONS.

-- PARA 1 ON GOP PROPERTY INCLUDES THESE CHANGES:

-- SUBPARA (A): RARET VERSION IS CHANGED ONLY TO NAME THE CTT INSTEAD OF GOP;

-- SUBPARA (B) IS REWRITE OF RARET'S ART.

2 PARA 2(B) AS FOLLOWS: "THE EQUIPMENT WHICH IS MENTIONED IN PREVIOUS ITEM WHICH, IN THE TERMS OF THIS CONTRACT IS WRITTEN-OFF";

-- SUBPARA (C) ESSENTIALLY PICK UP WORDING OF RARET'S ARTICLE 2, SUBPARA (C).

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-- (COMMENT: RARET LAWYER SEES NO MAJOR PROBLEM WITH SUBPARAS (A) AND (B), BUT NOTES THAT LAND AND BUILDINGS REFERRED TO IN (C) STILL BELONGED TO RARET, NOT GOP, UNDER THE 1963 CONTRACT. THESE COULD, IN FACT, BE CEDED TO THE GOP, BUT ONLY AS A NEGOTIATING FACTOR.)

-- ARTICLE 2 PARA 2:

-- SUBPARA (A) IS ESSENTIALLY THE SAME AS RARET DRAFT;

-- SUBPARA (B) IS CHANGED TO READ "OTHER TRANSMITTERS, THE INSTALLATION OF WHICH MAY BE AUTHORIZED (ADDING NECESSITY OF GOP AUTHORIZATION)";

-- SUBPARA (C) IS CHANGED TO PICK UP MATERIAL FROM RARET VERSION'S SUBPARA (B): "ALL THE ELECTRIC AND RADIO-OPERATED EQUIPMENT AND OTHER INSTALLA-

TIONS RARET MAY ACQUIRE, FOR ANY REASON,
FOR THE PURPOSES ESTABLISHED IN PRESENT
CONTRACT";

-- SUBPARA (D) IS SUBSTITUTION OF A NEW ITEM
GIVING RARET "ALL LAND AND BUILDINGS
WHICH SAME RARET MAY ACQUIRE TO EXERCISE
ITS ACTIVITY."

-- (COMMENT: RARET VERSION'S SUBPARA (A),
DROPPED BY FIGUEIREDO, GAVE RARET OWNER-
SHIP OF "ALL TUBES EXTANT OR WHICH MAY
BE ACQUIRED," A PHRASE BIB WANTED.
PROPERTY AUTHORIZED IN NEW VERSION OF
(D) IS MOOT QUESTION, AS RARET ANTI-
CIPATES NEED OF NO ADDITIONAL LAND OR

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BUILDINGS. IT SHOULD BE NOTED THAT
UNDER ARTICLE 18 OF FIGUEIREDO DRAFT,
ALL RARET-OWNED ITEMS IN PARA 2 WILL
REVERT TO CTT AT END OF CONTRACT PERIOD.)
ARTICLE 2 PARA 2: ESSENTIALLY UNCHANGED.
--ARTICLE 2, NUMBERED PARA 2 OF
RARET DRAFT WAS OMITTED. FIGUEIREDO TOLD
RARET MANAGER THAT GOP ALLOWS ABSOLUTELY
NO DUTY-FREE ENTRY, WITH NO EXCEPTIONS,
NOT EVEN FOR STATE RADIO. RARET ATTORNEY
IS TRYING TO VERIFY THIS. RARET LAWYER
SUGGESTS AS POSSIBLE FALL-BACK AN ITEM
COULD BE INSERTED IN CONTRACT TO STATE THAT

DISCUSSION ON DUTY-FREE STATUS OF IMPORTS
WOULD BE TAKEN UP IF AND WHEN MODERNIZATION
ISSUES COMES UP.)

-- ARTICLE 3: IS REWRITE OF RARET'S ART. 2, PARA 1.
IMPORTANT DIFFERENCE IS THAT RARET WORDING "IS
AUTHORIZED AS OF NOW" WAS CHANGED TO "MAY BE
AUTHORIZED, UPON REQUEST." (COMMENT: RARET LAWYER
THOUGHT THIS CHANGE INAPPROPRIATE. ISSUE IS A TECH-
NICAL ONE, AND AGREEMENT MIGHT BE FOUND TO LEAVE IT
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OUT OF CONTRACT.)

-- ARTICLE 4: THIS IS NEW ITEM READING "THE AUTHOR-
IZATION TO INCREASE THE NUMBER OR POWER OF THE
TRANSMITTERS IN EXISTENCE ON THIS DATE WILL BE THE
OBJECT OF AN ADDITIONAL CONTRACT IN WHICH DIFFERENT
CONDITIONS FROM THOS CONTAINED IN THIS CONTRACT MAY
BE ESTABLISHED." (COMMENT: RARET WILL WANT TO
DELETE THIS ARTICLE.)

-- ARTICLE 5: ACCEPTABLE REWRITE OF RARET ARTICLE 3.

-- ARTICLE 6: ACCEPTABLE REWRITE OF RARET ARTICLE 4.

-- ARTICLE 7: ACCEPTABLE REWRITE OF RARET ARTICLE 5.

-- ARTICLE 8: ACCEPTABLE REWRITE OF RARET ARTICLE 6
INCLUDING THE "SOLE PARAGRAPH."

-- ARTICLE 9: ACCEPTABLE REWRITE OF RARET ARTICLE 7.

-- ARTICLE 10: ACCEPTABLE REWRITE OF RARET ARTICLE 8.

-- ARTICLE 11 AND ITS PARAGRAPHS ARE REWRITE OF RARET
ARTICLE 9. FIGUEIREDO DRAFT OMITTS MENTION GIVEN
IN RARET SUBPARA (C) OF "THIRD PARTIES", BUT RARET
ATTORNEY THOUGHT THIS CREATED NO REAL PROBLEM.

-- ARTICLE 12: IS REWRITE OF RARET ARTICLE 9, PARAS
4 AND 5, WITH SIGNIFICANT NEW MATERIAL. FIGUEIREDO
TEXT READS: "RARET CANNOT INCREASE OR WRITE OFF
FROM THE PATRIMONY REFERRED TO IN THE BODY OF ART. 2
OF THIS CONTRACT, ANY EQUIPMENT OR ANY OTHER PROPERTY
OF PERMANENT UTILIZATION WITHOUT OBTAINING FOR
THIS PURPOSE PRIOR AUTHORIZATION FROM THE EMPRESA
PUBLICA CORREIOS E TELECOMUNICACOES DE PORTUGAL".
ADDITIONAL SOLE PARA READS: "IN CASE OF WRITE-OFF,
THE AUTHORIZATION REFERRED TO IN THE BODY OF THIS
ARTICLE MAY BE GRANTED ON CONDITION THAT THE PROPERTY
OR EQUIPMENT WRITTEN OFF IS REPLACED BY EQUIVALENT
EQUIPMENT WITH THE CHARACTERISTICS TO BE ESTABLISHED
BY AGREEMENT BETWEEN RARET AND THE EMPRESA PUBLICA
CORREIOS E TELECOMUNICACOES DE PORTUGAL." (COMMENT:
THIS ARTICLE RELATES TO FIGUEIREDO'S ARTICLES 18 AND
2. FIGUEIREDO DRAFT SEEKS TO PROTECT EQUIPMENT
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WHICH IT ENVISAGES TAKING OVER AT END OF CONTRACT PERIOD. ARTICLE IS UNACCEPTABLE TO RARET, BECAUSE IT INSISTS THAT ALL OLD EQUIPMENT BE REPLACED, WHICH COULD PROVE HIGHLY IMPRACTICAL.)

-- ARTICLE 13: REWRITES RARET ARTICLE 10 AND ITS FIVE PARAS, AND ADDS NEW PARAS 6-9. PARAS 8 AND 9 ARE REWRITES FROM RARET ARTICLES 19 AND 29. THESE PARAS STATE THAT RARET UNDERTAKES TO:

-- NEW PARA 6: "RESTRICT, AS MUCH AS POSSIBLE, THE UTILIZATION OF FOREIGN PERSONNEL; THE NUMBER AND RESPECTIVE CATEGORIES OF SUCH PERSONNEL BEING SUBJECT TO THE APPROVAL OF THE PORTUGUESE GOVERNMENT, THROUGH ITS DELEGATE; AND

-- NEW PARA 7: "KEEP IN A GOOD STATE OF

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MAINTENANCE AND OPERATION THE PROPERTY
LEASED TO IT AND REFERRED TO IN NO. 1,
LINE A), OF ARTICLE 2, OF THIS CONTRACT
AS WELL AS ITS OWN PREPRTY REFERRED TO IN
NO. 2 OF SAME ARTICLE, AND TO REPLACE, IN
ANY OF THE CASES, THE EQUIPMENT WHICH
DETERIORATES."
(COMMENT: RE PARA 6, FOREIGN PERSONNEL
LEVEL ALREADY IS LOW, CONSISTING OF TWO

PERSONS, AND PRESENTS NO PROBLEM. PARA
7 SHOULD INCLUDE REFERENCE TO FAIR WEAR AND
TEAR ON EQUIPMENT, ACCORDING TO RARET LAWYER.)

-- NEW PARA 8: OMITS WORDING "IN A MANNER NOT
TO INTERFERE WITH THE NORMAL BROADCASTS OF
THE LATTER," WHICH RARET WILL WANT RESTORED
TO FINAL CONTRACT VERSION.

-- NEW PARA 9: ACCEPTABLE REWRITE OF RARET
ARTICLE 20.

-- ARTICLE 14: ACCEPTABLE REWRITE OF RARET ARTICLE 11,
EXCEPT THAT RARET ATTORNEY WILL WANT ADDITIONAL
PHRASE TO INSERT AFTER "GRAVE NATIONAL EMERGENCY," WHICH
WOULD LINK IT TO A DEMONSTRABLE SITUATION.

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-- ARTICLE 15: THIS REWRITE OF RARET ARTICLE 12 OMITS
PHRASE "EXCEPT THOSE WHICH ARE RENTED BY OR LEASED
TO RARET FOR ANY REASON AND, AS SUCH, ARE NOT PART
OF ITS PARTIMONY." (COMMENT: BIB INSISTED
UPON THAT CLAUSE, AND RARET ATTORNEY BELIEVES
ITS EXCLUSION WOULD CREATE "JURIDICALLY
IMPOSSIBLE" SITUATION.)

-- ARTICLE 16: ACCEPTABLE REWRITE OF RARET
ARTICLE 13, EXCEPT FOR ADDED "SOLE PARAGRAPH"
WHICH ALTERS TERMINATION ARRANGEMENTS GIVEN IN
RARET'S ART. 16, PARAS 1 AND 2. FIGUEIREDO
VERSION PROVIDES THAT EITHER PARTY MAY
TERMINATE CONTRACT AFTER SEVEN YEARS, WITH THREE
MONTHS' ADVANCE NOTICE INSTEAD OF RARET'S PROPOSED
TEN YEARS AND THREE YEARS' NOTICE. (COMMENT:
WE BELIEVE THIS WILL HAVE TO BE NEGOTIATED, AS
THREE MONTHS' NOTICE, IN PARTICULAR, APPEARS
UNACCEPTABLE. ALSO, SEE FIGUEIREDO'S DRAFT
ART. 20, BELOW.)

-- ARTICLE 17: ACCEPTABLE REWRITE OF RARET'S ARTICLE
14.

-- ARTICLE 18: READS ALMOST EXACTLY THE SAME AS
RARET'S ARTICLE 13, PARA 1, BUT ITS EFFECT IS
TOTALLY DIFFERENT BECAUSE IT ALLUDES TO ARTICLE 2,
PARA 2--WHICH IN THE FIGUEIREDO DRAFT ADDS NEW
EQUIPMENT WHICH RARET MAY ACQUIRE, AS WELL AS
EXISTING MATERIAL AND PROPERTIES. (COMMENT:
WE BELIEVE ARTICLE MUST BE NEGOTIATED IN TANDEM
WITH ARTICLE 2.)

-- ARTICLE 19: A REWRITE OF RARET'S ART. 16, PARA 2,
WITH MAJOR DIFFERENCES. TEXT: "THE CONTRACT BEING
RESCINDED UNDER THE TERMS OF THE SOLE CLAUSE OF
ARTICLE 16, THE PORTUGUESE STATE MAY ACQUIRE
FROM RARET THE PROPERTY MENTIONED IN(PARA.)NO. 2
OF ARTICLE 2, UPON PAYMENT OF THE AMOUNTS TO BE

ESTABLISHED. THIS WILL BE BASED ON THE CRITERION
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OF THE VALUE OF THE ACQUISITION AND TIME OF USEFUL
LIFE. THE MAXIMUM LIMIT OF SAME IS THAT OF THE END
OF THE NORMAL DURATION OF THIS CONTRACT;"

-- PARA 1: "SHOULD THE PORTUGUESE STATE NOT WISH
TO MAKE USE OF THE PRIVILEGE FORESEEN IN THE BODY
OF THIS ARTICLE, RARET MAY DISPOSE OF THE
PROPERTY REFERRED TO THEREIN, WITH THE LIMITA-
TIONS RESULTING FROM LEGAL APPLICABLE CONTRACTUAL
DISPOSITIONS;"

-- PARA 2: "IF THE DECISION TO RESCIND THE
CONTRACT IS MADE BY RARET, THE AMOUNT TO BE
PAID BY THE PORTUGUESE STATE, UNDER THE TERMS
OF THE BODY OF THIS ARTICLE, WILL BE REDUCED
BY 50 PERCENT."

-- (COMMENT: ARTICLE 19 WOULD BASE GOP PURCHASE
OF EQUIPMENT ON BOOK VALUE, WHILE ARTICLE 22,

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USIA FOR IEU MCLAUGHLIN

ON OVER-ALL CONTRACT FEE, IS BASED ON
CONCEPTS OF ORIGINAL INVESTMENT COSTS. ARTICLE
19'S "SOLE PARAGRAPH" OMITTS PHRASE FROM RARET
ARTICLE 16, PARA 2, UNDER WHICH "THE LATTER

WILL BE FREE TO ALIENATE, REMOVE AND EXPORT THE
PROPERTY REFERRED TO IN ARTICLE 2, ITEM 2,
LINE A." WE BELIEVE THIS PHRASE MUST BE
RESTORED.)

-- ARTICLE 20 ROUGHLY CORRESPONDS TO RARET ARTICLE 16,
PARAS 1 AND 2, WITH MAJOR DIFFERENCES. FIGUEIREDO
VERSION WOULD ALLOW GOP TO TERMINATE CONTRACT
AFTER SEVEN YEARS, WITH ONE YEAR'S NOTICE. (COMMENT:
SEE ART. 16 ABOVE.)

-- ARTICLE 21: ACCEPTABLE REWRITE OF RARET ARTICLE 15.

-- ARTICLE 22: REWRITE OF RARET'S ARTICLE 17,
ON CONTRACT FEE PAID BY RARET. FIGUEIREDO DRAFT
ASKS FOR \$13,400,000 FOR THE 15-YEAR CONTRACT,
COMPARED TO THE 42,500,000 ESCUDOS (ABOUT \$1,370,000)
OFFERED IN RARET DRAFT.

-- (COMMENT: FIGUEIREDO TOLD RARET THAT THE SUM
GIVEN IN HIS DRAFT WAS CLACULATED AS FOLLOWS:
FOR THE FIRST TEN YEARS:

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(A) RENTAL OF CTT PROPERTY, USING PROPERTY VALUE
SET AT 177,000,000 ESCUDOS TIMES EIGHT PERCENT TIMES
TEN YEARS EQUALS 141,600,000 ESCUDOS.

(B) VALUE OF THE CONCESSION: \$700,000 (WHICH
WAS THE ANNUAL RATE UNDER 1963 CONTRACT) TIMES A
"CORRECTION FACTOR" OF THREE EQUALS \$2,100,000
TIMES 31 (FIGURING THAT EXCHANGE RATE IS 31 ESCUDOS
PER DOLLAR) EQUALS 65,100,000 ESCUDOS.

(C) UTILIZATION OF FACILITIES DURING PERIOD APRIL
1973 TO DECEMBER 1976 (PERIOD SINCE 1963 CONTRACT
ENDED) WOULD BE (UNDER SAME RATE) 75,776,000
ESCUDOS.

(D) DEDUCTION FOR ANTENNA TIME GRANTED TO PORTUGUESE
STATE RADIO OF ONE PERCENT TIMES 128,000,000 ESCUDOS
TIMES TEN (FOR TEN YEARS) EQUALS 12,800,000 ESCUDOS.
ALL OF THESE SUMS GIVE A TOTAL OF 269,676,000 ESCUDOS
OR \$8,697,225, WHICH FIGUEIREDO ROUNDED OUT TO
\$8,700,000.

FOR LAST FIVE YEARS:

(A) RENTAL OF CTT PROPERTY: 177,000,000 ESCUDOS
TIMES EIGHT PERCENT TIMES FIVE YEARS EQUALS
70,800,000.

(B) VALUE OF THE CONCESSION: \$700,000 TIMES THREE
("CORRECTION FACTOR") TIMES 1.5 EQUALS \$1,050,000
OR 32,550,000 ESCUDOS.

(C) DEDUCTION FOR TIME OF ANTENNA GRANTED TO STATE
RADIO: ONE PERCENT TIMES 128,000,000 ESCUDOS TIMES
FIVE YEARS EQUALS 6,400,000 ESCUDOS.

SUM OF ABOVE WOULD BE 96,950,000 ESCUDOS

A 50 PERCENT INCREASE (BASED ON ESTIMATED

"INFLATION FATE"), BRINGS FIVE-YEAR TOTAL
TO 145,425,000 ESCUDOS OR U.S. \$4,691,127,
WHICH THEN WAS ROUNDED TO \$4,700,000.
THUS SUB-TOTALS: \$8,700,000 FOR FIRST TEN
YEARS, AND \$4,700,000 FOR LAST FIVE YEARS, TOTALLING
\$13,400,000. INSTALLMENTS WOULD BE TEN YEARS AT
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\$870,000 AND FIVE YEARS AT \$940,000.
AMONG OBVIOUS FALLACIES IN THIS REASONING:
THE "CORRECTION FACTOR" IS BOTH ARTIBRARY AND
EXAGGERATED. ALSO, THE RATE FOR USE OF CTT EQUIP-
MENT -- SOME OF WHICH WILL HAVE DISPUTED OWNER-
SHIP DURING CONTRACT NEGOTIATIONS -- IS THAT OF
ORIGINAL PURCHASE PRICE, NOT TODAY'S BOOK VALUE.
ALTHOUGH FIRST RARET CONTRACT, IN 1951, WAS
WRITTEN IN DOLLAR TERMS, THE 1963 CONTRACT WAS IN
ESCUDOS, AND RARET LAWYER IS STUDYING TO SEE
WHETHER PORTUGUESE LAW MAY PROHIBIT RARET, AS
PORTUGUESE FIRM, FROM PAYING IN DOLLARS, A FOREIGN
CURRENCY. END OF COMMENT ON ART. 22)
-- ARTICLE 23 IS REWRITE OF RARET ARTICLE 18.
(COMMENT: MAIN DIFFICULTY HERE IS IN OPENING PHRASE,
"WITH PRIOR AUTHORIZATION FROM PROPER ENTITY."

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RARET WILL WANT PHRASE TO BE CHANGED TO READ:

"IN ACCORDANCE WITH TERMS OF THIS CONTRACT...")

-- ARTICLE 24: AN ACCEPTABLE REWRITE OF RARET'S

ARTICLE 21.

-- ARTICLE 25: NEW, STIPULATING THAT ANY DISAGREEMENT
RESULTING FROM THIS CONTRACT WILL BE SUBJECT TO THE
COURT OF THE DISTRICT OF LISBON. THIS PRESENTS
NO PROBLEM.

3. OVERALL COMMENT: OUR DETAILED REVIEW CONFIRMS
EMBASSY'S INITIAL ASSESSMENT THAT FIGUEIREDO GROUP'S
DRAFT WILL REQUIRE RENEGOTIATION AND EXTENSIVE MODIFICA-
TION BEFORE IT MEETS BIB-RFE REQUIREMENTS, AS WE UNDER-
STAND THEM. BIB WILL, OF COURSE, CONDUCT ITS OWN REVIEW
AND MAY WELL UNCOVER ADDITIONAL POINTS AT ISSUE. WOULD
APPRECIATE READ-OUT ON BIB REACTION AS SOON AS
PRACTICABLE.

4. WE HAVE INSTRUCTED RARET LAWYER TO BEGIN DRAFTING
COUNTER-PROPOSALS FOR IN-HOUSE REVIEW. OUR IMPRESSION
OF HIM CONTINUES TO BE THAT HE IS COMPETENT AND CAN BE
RELIED UPON FOR TECHNICAL COUSEL. WE ARE IMPRESSING
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UPON RARET TEAM THAT POLICY DECISIONS WILL BE TAKEN BY
WASHINGTON, AND THEY UNDERSTAND THIS.
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